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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ANDRES V. et al., Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

ANGELA V.,

Defendant and Appellant.

D058441

(Super. Ct. No. SJ12011A-C)

APPEAL from an order of the Superior Court of San Diego County, Garry G.

Haehnle, Judge. Affirmed.

Angela V. appeals a juvenile court order terminating parental rights to her minor children, Andres V., Ashley C., and Angelina C., under Welfare and Institutions Code section 366.26.¹ Angela challenges the sufficiency of the evidence to support the court's

¹ All further statutory references are to the Welfare and Institutions Code.

finding that the beneficial parent-child relationship exception to termination of parental rights does not apply. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Angela V. and Jose C.² are the parents of Andres V., Ashley C., and Angelina C., (collectively, the children). In April 2008 Jose physically assaulted Angela in the presence of Andres and Ashley (April incident). Angela told the police Jose had abused her previously and she was afraid of him, but declined offers for an emergency protective order and shelter. Jose reportedly controlled his family with violence. The matter was referred to the San Diego County Health and Human Services Agency (the Agency), which filed petitions alleging Andres and Ashley were at substantial risk of severe emotional damage caused by repeated exposure to domestic violence. (§ 300, subd. (b).)

In an Agency interview, Angela denied Jose had abused her. Angela said she was not afraid of Jose and their arguments did not negatively affect Andres and Ashley. Jose had moved out of their home immediately after the April incident, but she loved Jose and wanted to continue their relationship. Later, Angela admitted Jose had abused her in the past and she had miscarried following one incident. Angela's family members reported the domestic violence between Angela and Jose was "continuous and on-going," and had observed that Andres and Ashley looked happier when Jose was absent. Angela claimed she did not know Jose's whereabouts, or how to contact him.

² Jose does not appeal.

The Agency required Angela to obtain a restraining order against Jose and participate in domestic violence counseling. Angela's initial application for a restraining order was denied because she stated Jose had not been abusive. Later, Angela filed another declaration in support of her request for a restraining order acknowledging the abuse.

The court detained Andres and Ashley and placed them with Angela on the condition they live with a family member, and Angela obtain the Agency's permission before any move. The case plan required Angela to provide a safe home for Andres and Ashley, participate in a domestic violence program and attend parent education classes. The court issued a restraining order against Jose.

Angela completed a domestic violence program and parenting classes, but was unable to maintain stable housing, and the Agency frequently was unable to verify her living arrangements. On several occasions Angela provided incorrect information about Andres's and Ashley's daycare, presumably to prevent the Agency from visiting them in her absence. Andres and Ashley appeared healthy, fed, bathed, and happy with their mother, but Ashley was having tantrums and attachment issues, and the Agency believed she would benefit from a stable living arrangement. The Agency continued to search for Jose, and Angela continued to deny knowledge of his whereabouts.

Shortly after the six-month hearing, the Agency detained Andres and Ashley in a foster home and filed supplemental petitions under section 387, alleging prior dispositional orders had not been effective in protecting them because Angela had continued to expose Andres and Ashley to domestic abuse. (§ 387.) When the Agency

met with Andres without Angela present, Andres stated he saw Jose frequently, and Jose continued to physically and verbally abuse his mother. Andres demonstrated how Jose hit Angela and said it made him cry and feel bad. Angela was not living where she claimed, and she intended to continue her relationship with Jose after the dependency case was closed. Although Angela had repeatedly denied she was pregnant, she eventually admitted she was pregnant by Jose, but denied knowing Jose's current whereabouts.

At the contested jurisdiction and disposition hearing on March 24, 2009, the court sustained the Agency's allegations under section 387 that placement with Angela had not been effective in protecting Andres and Ashley, continued their status as dependents in accordance with section 361, subdivision (c)(1), and placed them in foster care. Angela appealed and, in an unpublished opinion, we affirmed the dispositional order. (*In re Andres V.* (Sept. 23, 2009, D054885 [nonpub. opn.].)

In April 2009 Angela gave birth to Angelina, and the Agency filed a petition on her behalf under section 300, subdivision (b). Although Angela attempted to conceal Jose's involvement, he was present in the hospital during Angelina's birth in violation of the restraining order. Angela was advised that she was required to make substantive progress within six months because Angelina was under three years of age or a member of a sibling group as described in section 361.5, subdivision (a)(3). In June 2009 the court sustained the allegations of the petition on behalf of Angelina, placed her in foster care and ordered services for Angela.

The Agency's September 2009 report on behalf of Andres and Ashley recommended Angela's parental rights be terminated and the case be set for a section 366.26 hearing. Andres and Ashley were doing well in their placement and developing an attachment to their foster parents. Angela had difficulty attending to all of the children during visits and was unable to deal effectively with Andres's tantrums. Angela continued to expose Andres and Ashley to Jose, but she persisted in denying she had contact with him.

Angela's psychological evaluation reported she was immature with unmet dependent needs and displayed a limited ability to maintain a consistent parental role. The psychologist was concerned Angela's extreme dependency needs would limit her ability to stay away from Jose and other violent men. Testing revealed Angela's preoccupation with gratification of her own needs for protection and nurturance, and her perception of children as objects for adult gratification. The psychologist questioned Angela's capacity for empathy toward children as well as her ability to nurture them or understand their normal developmental needs. The psychologist described Angela as resistant, angry, anxious and defensive. Angela's therapist believed she was still involved with Jose, and reported she continued to minimize the domestic violence and defended him as "a nice guy."

The court set a contested section 366.21 six-month hearing for all three children for December 7, 2009. Three days before the six-month hearing, Angela and Jose were arrested and detained in federal custody after they allegedly attempted to smuggle a teenager into the United States from Mexico. At the rescheduled contested six-month

review hearing in January 2010, the court terminated reunification services with respect to the children, and scheduled a section 366.26 hearing.³ The court found Angela had not made substantive progress on her case plan, returning the children to parental custody would be detrimental to them, and there was no substantial probability the children would be returned home by the 12-month date.

The section 366.26 report recommended termination of parental rights and adoption. Angela admitted living with Jose from September through December 2009. From her arrest in December 2009 until February 2010, Angela had no contact with the children. Angela had telephone calls with the children beginning in February, but by April Andres and Ashley had become less interested in speaking to her. When supervised visits began in April, Andres and Ashley were excited to see Angela. Angelina seemed not to recognize Angela at first, but later warmed up to her. The visits were generally positive, but Angela had difficulty supervising the children and, although she was asked not to, she continued to bring junk food and treats. The children usually separated easily from Angela after visits. In July the children were moved into a prospective adoptive home and were adjusting very well.

At the contested section 366.26 hearing, Angela requested long-term foster care or guardianship for the children instead of adoption. The court found by clear and convincing evidence the children were generally and specifically adoptable. The court ruled none of the exceptions of section 366.26, subdivision (c)(1), applied, and

³ The court denied Jose's request for services because of his failure to request them earlier in the proceedings.

termination of parental rights would not be detrimental to the children.⁴ The court found the children had no parental relationship with Jose. The court found that although Angela had regular visitation with the children, she did not have a beneficial parental relationship with them, and any relationship did not outweigh the benefits of adoption.

DISCUSSION

Angela asserts she maintained regular visitation and contact with the children and the children would benefit from continuing their relationship. (§ 366.26, subd. (c)(1)(B)(i).) Angela argues the evidence was insufficient to support the court's finding that a beneficial parent-child relationship did not exist.

A. *Section 366.26 and Standard of Review*

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) Because a section 366.26 selection and implementation hearing is held "after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) "At a section 366.26 hearing, the court must terminate parental rights and free the child for adoption if it determines by clear and convincing evidence the child is adoptable, and none of the seven exceptions listed in section 366.26, subdivision (c)(1)(A) and (B) applies to make termination of parental rights detrimental to the child." (*In re Jason J.* (2009) 175 Cal.App.4th 922,

⁴ The children had an older half sibling and the court determined the benefits of adoption outweighed the children's ongoing contact with him.

936, citing § 366.26, subd. (c)(1).) If the child is found to be adoptable, the focus of the inquiry shifts to the best interests of the child, and it is the parent's burden to prove the existence of an exception under section 366.26, subdivision (c)(1). (*In re Jason J.*, *supra*, at p. 936.)

We apply the substantial evidence standard to review the trial court's finding regarding the applicability of a statutory exception to adoption. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) We do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence, or evaluate the weight of the evidence. (*Ibid.*) Instead, we draw all reasonable inferences in support of the findings and view the record favorably to the juvenile court's order. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) To prevail on appeal, Angela must show more than the beneficial parent-child relationship existed by a preponderance of evidence; she must show there was no evidence of a sufficiently substantial nature to support the court's finding that the relationship did not exist, and we will affirm the order even if substantial evidence supports a contrary finding. (*In re L.Y.L.*, at p. 947; *In re Casey D.*, at pp. 52-53.)

B. *Analysis*

Section 366.26, subdivision (c)(1)(B)(i), precludes termination of parental rights when "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." We have interpreted the phrase "benefit from continuing the relationship" to refer to a parent-child relationship that "promotes the well-being of the child to such a degree as to outweigh the well-being the

child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; accord, *In re Jason J.*, *supra*, 175 Cal.App.4th at pp. 936-937, *In re Zachary G.* (1999) 77 Cal.App.4th 799, 811.)

To meet the burden of proof for this statutory exception, Angela must show more than frequent and loving contact, an emotional bond with the children, or pleasant visits. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827; *In re Jason J.*, *supra*, 175 Cal.App.4th at pp. 936-937.) Angela was required to show she occupied a parental role in the children's lives, resulting in a significant, positive emotional attachment from the children to her. (*In re Derek W.*, at p. 827; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.) She must additionally show that maintaining her relationship with the children outweighed the benefits of adoption for them. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 191 [child's interest in stable and permanent home is paramount once a parent's interest in reunification is no longer at issue].)

The court determined that although Angela and the children shared a positive relationship, it was not a parent-child relationship. Substantial evidence supports this finding. Angela regularly visited the children and showed them warmth and affection,

but she did not assume a parental role with them. Despite having participated in parenting classes, Angela had difficulty supervising the children, lacked insight concerning their behavior and feelings, and her psychological evaluation questioned her ability to understand developmental issues or nurture them. The children had little or no difficulty separating from Angela at the end of their visits. There was no evidence they were negatively impacted by Angela's absence from their daily lives. The court determined that Angela did not show the children had a "significant, positive, emotional attachment" to her so that terminating the parent-child relationship would result in great harm to them. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; *In re Jason J.*, *supra*, 175 Cal.App.4th at p. 936.)

Angela cites *In re S.B.* (2008) 164 Cal.App.4th 289, in which this court concluded the juvenile court erred by declining to apply the beneficial parent-child relationship exception. (*Id.* at p. 301.) "The *S.B.* opinion must be viewed in light of its particular facts. It does not, of course, stand for the proposition that a termination order is subject to reversal whenever there is 'some measure of benefit' in continued contact between parent and child." (*In re Jason J.*, *supra*, 175 Cal.App.4th at p. 937.) *In re S.B.* is distinguishable on several grounds. In that case the child continued to display a strong attachment to the appellant father after her removal (*In re S.B.*, at pp. 298-301) and they had " 'an emotionally significant relationship.' " (*Id.* at p. 298.) The father "complied with 'every aspect' of his case plan" (*id.* at p. 298), empathized with his child, recognized her needs (*id.* at p. 294), and placed her needs above his own (*id.* at p. 298). Those factors are not present here. Substantial evidence supports the conclusions that Angela

did not have "a substantial, positive emotional attachment" to the children that would outweigh the well-being they would gain in an adoptive home, and they would not be greatly harmed by the severance of their relationship. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) The court properly declined to apply the beneficial parent-child relationship exception.

Substantial evidence also supports the court's finding that the benefits of the children's adoption outweighed any beneficial parental relationship. "A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) Although Angela loved the children, her continued instability, failure to develop the necessary parenting skills, maintenance of an abusive relationship with Jose, and denial of the effects of that abusive relationship on the children prevented her from developing a relationship with the children that outweighed the security and stability of an adoptive home. "The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it." (*In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038.)

We do not reweigh the evidence or substitute our judgment for that of the juvenile court. (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 53.) The court selected adoption for the children based on the evidence and on the statutory preference for adoption as the permanent plan, and the plan that served their best interests. (*In re Jose V.* (1996)

50 Cal.App.4th 1792, 1797.) The children deserve to have their custody status promptly resolved and their placement made permanent and secure. Although Angela would prefer guardianship or long-term foster care for the children as the permanent plan, there is no reason, supported by policy or the law, to deviate from the Legislature's preference for adoption in this case. Substantial evidence supports the court's finding the beneficial parent-child relationship exception did not apply to preclude terminating Angela's parental rights.

DISPOSITION

The order is affirmed.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

NARES, J.